IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.22958 of 2016
and
W.M.P.No.19682 of 2016

Oragadam City Developers (P) Ltd., (Inno Geocity)
Rep. by its Executive Director,
No.05, Giri Street, T.Nagar,
Chennai - 600 017. .. Petitioner

Vs

1.The Collector,
District Collectorate,
Kanchipuram District.

2.No.90, Kattavakkam Village Panchayath,
Rep. by its President R.Narasimhan
S/o. R.Rajagopal,
No.3, Selva Vinayagar Koil Street,
Kattavakkam Village, Thenneri Post,
Wallajabad Taluk, Kanchipuram District.

3.The Assistant Director (Panchayath),
District Collectorate,
Kanchipuram District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the Distraint Warrant No.1 dated 22.06.2016 of the 2nd respondent and quash the same.

For Petitioner : Mr.K.P.Sanjeev Kumar
for M/s.Ojas Law Firm

For Respondents : Mr.A.Zakkir Hussain
Government Advocate (R1 & R3)
Mr.P.Mani R2

ORDER

Heard Mr.K.P.Sanjeev Kumar, learned counsel appearing for the petitioner, Mr.A.Zakkir Hussain, learned Government Advocate appearing for the respondents 1 and 3 and Mr.P.Mani, learned counsel appearing for the second respondent and with their consent, this Writ Petition is taken up for final disposal.

2.The petitioner is a Company engaged in real estate development and it appears that they have developed large housing layout consisting of ready built houses in Kattavakkam Village Panchayat. In the present proceedings, the order which is impugned is a Distraint Warrant issued by the second respondent calling upon the petitioner to clear the entire arrears of property tax from the assessment year 2012-2013 onwards to 2016-2017 in respect of 259 houses. Though the annexure to the impugned Distraint Warrant consists the names of the owners of the houses, it appears that several of them are not residing in the houses as the project is in the final stage of completion and the address given is the address of the concerned houses. Therefore, rightly the second respondent has served the Distraint Warrant on the petitioner as they would be liable to clear the dues since as on date the houses are not occupied by the purchasers. The petitioner would state that the impugned proceedings is a result of a provisional assessment. However, from the records placed before this Court by the learned counsel appearing for the second respondent, it is clear that the impugned Distraint Warrant demands the amount which has been determined as property tax. In other words, when provisional notices were issued to the house owners, if there is no objection are made within the time permitted those provisional notices ripen into demand notices. Therefore, the only remedy for any aggrieved person is to prefer an appeal to the Appellate Authority against such determination of tax. In the instant case, the petitioner have rightly understood the scope of the demands and have preferred appeals on 18.05.2016. According to the petitioner, though the appeal has to be heard by the District Collector appeal petitions were directed to be routed through the Assistant Director of Panchayat which they have scrupulously followed and as of now, the District Collector, Kanchipuram District, the first respondent herein is seized of the matter. In the meantime, since the Distraint Warrant has been issued to the petitioner, the petitioner is before this Court by way of this writ petition.

3.After elaborately hearing the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 and 3 and the learned counsel appearing for the second respondent, this Court is of the view that while considering the relief that could be granted to the petitioner, the financial interest of the second respondent Panchayat also needs to be protected. Similarly, the interest of the petitioner in pursuing their appeal before the Appellate Authority should not be hindered in any manner.

4.The petitioner would contend that the property tax has been levied from the assessment year 2012-2013 onwards when the possession of the houses were handed over to the purchasers only in 2014-2015. The other contention raised by the petitioner is that the rate of tax which has been adopted by the 2nd respondent in respect of other houses in the panchayat limit is only at 40 paise per sq.ft., but whereas the second respondent has assessed the houses constructed by the petitioner at Rupees 1 per sq.ft. Furthermore, it is stated that the houses were not inspected properly and in respect of about 30 houses inspection were done in a proper manner and the petitioner without prejudice to the rights have paid the amount demanded and are contesting the fixation of property tax at the rate of Rupees 1 per sq.ft. The learned counsel appearing for the second respondent pointed out that the petitioner themselves in their letter dated 24.11.2015 have accepted and submitted that the tax may be assessed at Rupees 1 per sq.ft.

5.Be that as it may, now the issue as regards the fixation of property tax is pending consideration by the first respondent in the appeals filed by the petitioner. Therefore it has to be seen as to what should be done in the interregnum. Admittedly the petitioner has handed over the houses to the purchasers from the assessment year 2014-2015. Therefore, the petitioner has to pay taxes as assessed in respect of the houses covered in the Distraint Warrant, namely, 259 units from the assessment year 2014-2015 to 2016-2017. For the time being, this Court is inclined to grant an interim reprive for the earlier two assessment years, i.e., 2012-2013 and 2013-2014 since the petitioner contends that the houses were not handed over to the purchasers. However, this is only an interim reprive granted and should not be misunderstood as if this Court has accepted the submission of the petitioner. The second respondent would contend that the petitioner themselves have accepted for assessment of the houses from the said date and therefore, the assessment is proper and justified. However, this Court need not decide the issue at this juncture since the petitioner has preferred an appeal before the Appellate Authority.

6.In the light of the above, the impugned Distraint Warrant shall be kept in abeyance subject to the condition that the petitioner pays the entire property tax as demanded from them for all the 259 units from the assessment year 2014-2015 to

2016-2017 within a period of six weeks from the date of receipt of a copy of this order. On production of the receipt before the office of the first respondent, the first respondent is directed to consider the petitioner's appeal petition after issuing notice to the petitioner and the second respondent and affording an opportunity of personal hearing within a period of four weeks thereafter. Till the appeals are heard and disposed of by the Appellate Authority, the impugned demand for the assessment year 2012-2013 and 2013-2014 shall be kept in abeyance and abide by the orders to be passed by the Appellate Authority. If the petitioner fails to comply with the condition imposed by this Court supra within the time stipulated, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed without further reference to this Court and it will be open to the second respondent to enforce the impugned Distraint Warrant.

7.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Collector,
District Collectorate,
Kanchipuram District.

2. Mr.R.Narasimhan President
No.90, Kattavakkam Village Panchayath
No.3 Selva Vinayagar Koil Street,
Kattavakkam Village, Thenneri Post,
Wallajabad Taluk, Kanchipuram District.

3.The Assistant Director (Panchayath),
District Collectorate,
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+1 cc to M/s.Law & Firm Advocate sr.38086

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